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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 160

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY, A CORPORATION,

Petitioner,

VS.

G. W. BURLEY, ET AL.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Petition for Rehearing.

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SUBJECT INDEX.

PAGE

I. The majority opinion inadvertently misrepresents petitioner's position with reference to the rights of individual employees under the Act. Petitioner did not regard these issues as being present in the case at bar and took no position relating to them. Rehearing should be granted to give the petitioner an opportunity to state its position 2

II. The majority opinion overlooks some of the rules of the Brotherhood granting specific authority to Brotherhood officials to represent respondents in executing the settlement agreement and in filing the second claim before the Board. If all of these rules are considered not to grant such specific authority—collective bargaining is destroyed 20

Conclusion 28

Appendix:

Senate Report on 1934 Amendments 31

House Report on 1934 Amendments 35

TABLE OF CASES CITED.

Baltimore and Ohio R. Co., et al. v. Brady, 288 U. S. 448, 457 14

Hughes Tool Co. v. National Labor Relations Board, 147 F. 2d 69 ..... 17, 18

I. C. C. v. United States, 289 U. S. 385, 394 14

J. I. Case Co. v. National Labor Relations Board, 64 S. Ct. 576 20

PAGE

TABLE OF CASES CITED (Continued).

Moore v. Illinois Central Railroad Co., 312 U. S. 630 ..... 6, 8, 11, 26

Order of Railroad Telegraphers v. Railway Express Agency, Inc., 321 U. S. 342 ..... 3, 8, 20

Smith, et al. v. Texas & N. O. R. Co., 32 F. Supp. 1013, 118 F. 2d 75 25

Virginian Railway Co. v. System Federation, 300 U. S. 515-548 27

Washington Terminal Co. v. Boswell, et al., 124 F. 2d 235; affirmed, 319 U. S. 732 26

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Petition for Rehearing.

Elgin, Joliet and Eastern Railway Company, a corporation, the above named petitioner, presents this petition for a rehearing and, in support thereof, respectfully shows:

I.

The majority opinion inadvertently misrepresents petitioner's position with reference to the rights of individual employees under the Act. Petitioner did not regard these issues as being present in the case at bar and took no position relating to them. Rehearing should be granted to give the petitioner an opportunity to state its position.

The majority opinion at page 16 states:

> "Petitioner urges that, notwithstanding the proviso and Section 3 First (j), the effect of the provisions taken as a whole is to make the collective agent the employees' exclusive representative for the settlement of *all* disputes, both major and minor, and of the latter 'whether arising out of the application of such [collective] agreements or otherwise.' The argument rests primarily upon Sections 2 First, Second, Third, Fourth, Sixth, and 3 First (i). It emphasizes the carrier's duty to treat with the collective representative, as reinforced by Sections 2 Eighth and Tenth.
>
> "Petitioner does not squarely deny that the aggrieved employee may confer with the carrier's local officials either personally or through *local* union representatives in accordance with the proviso to Section 2 Fourth. But this right, if it exists, is regarded apparently as at most one to be heard, since in petitioner's view the power to make settlement by agreement is vested exclusively in the collective agent. Cf. §§ 2 Sixth and 3 First (i)."

This statement does not correctly set forth petitioner's view with reference to the construction of the Railway Labor Act.

Petitioner does not contend, for example, that the employee representative has power to settle personal injury claims of employees, for two reasons—(1) claims for

ersonal injuries do not grow out of grievances or out f the interpretation or application of agreements con- erning rates of pay, rules, or working conditions, and 2) claims for personal injuries and their settlement are ot the proper subject matter of grievances or of labor greements. They have never been so considered by your etitioner.

The same observation applies with reference to *any ther* dispute having no relation to rates of pay, rules nd working conditions. Your petitioner has never con- ended that the designated representatives of the em- loyees are the "exclusive representatives" of the em- loyees for the settlement of *such* disputes. The term exclusive representative" was never used by your peti- ioner in its briefs or argument before this Court. That erm is foreign to the Act. It does exist, however, in he National Labor Relations Act, Sec. 9 (a), as far as argaining for *the unit* is concerned.

Furthermore, your petitioner has never contended that he designated representative of the employees is the *exclusive* representative" for the settlement of *"all* isputes" and in particular, all *grievances* relating to inter- retation or application of agreements concerning rates f pay, rules or working conditions. The rights of in- ividual employees to *enforce* and *settle* their grievances— *hen clearly asserted*—are admitted.

Your petitioner admits that the designated representa- ve should be "notified and dealt with concerning the atter which from an employee's point of view . . . may rovide a leverage for taking away other advantages of e collective contract." (*Order of Railroad Telegraphers Railway Express Agency, Inc.*, 321 U.S. 343, 347.)

Article 25 of the schedule executed by your petitioner nd the Brotherhood should read as if the following

phrase from paragraph Fourth of Section 2 of the Act were incorporated into the schedule:

> ". . . *Provided,* That nothing in this chapter shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time, . . ."

Paragraph Eighth of Section 2 of the Act in part states:

> ". . . The provisions of said paragraphs [including Fourth] are hereby made a part of the contract of employment between the carrier and each employee, and shall be held binding upon the parties, regardless of any other express or implied agreements between them."

Paragraph Tenth of Section 2 of the Act provides that the willful failure or refusal of the carrier to comply with the terms of the Fourth paragraph shall be a misdemeanor. Upon conviction, the carrier shall be subject to a fine of not more than $20,000 or imprisonment or both for each offense.

Your petitioner admits that *any employee individually* may "confer" with your petitioner during working hours *without loss of time* in an effort to settle any grievance. This has always been the practice of your petitioner, notwithstanding its recognition of the Brotherhood as the designated representative of the employees. Furthermore, an *individual* employee of your petitioner, whether or not he is a member of the Brotherhood, "either personally or through *local* union representatives" may "confer" with local representatives of your petitioner at their various offices along the road. Such individual employees have done so in the past. Such *local* union representatives do so every day. They "confer" regarding grievances. They also make settlements. No clause in the labor agreement or schedule between your petitioner and

the Brotherhood prevents such individual or local settlements. Article 25 of the schedule expressly permits settlements with *local* union committees.

However, if the grievance discussed is a matter relating to the interpretation or application of agreements concerning rates of pay, rules or working conditions, any agreement to change or to make a new interpretation of the collective agreement is made only with the designated representatives.

Even as to *all grievances*, the Act imposes upon the carrier the duty to confer with the designated representatives of the employees. This statutory duty was noted in the opinion of the majority at page 14 and 15, note 26. Section 2, Sixth, of the Act in part provides:

> "In case of a dispute between a carrier or carriers and its or their employees, arising out of *grievances* or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives . . . of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: . . ." (Emphasis added.)

This duty to confer is to bring about agreement, if possible. (Cf. majority opinion, p. 19.)

Obviously, the Brotherhood is not the "*exclusive* representative" of an individual employee *seeking to enforce his grievance after* settlement with the carrier has failed. The individual employee need not refer his grievance to the Adjustment Board for adjudication.

Petitioner's brief, p. 36, stated:

> "Furthermore, the respondents in the first instance were not required to present their claims before the

> Adjustment Board. They could have directed their designated representatives to file a complaint in court and, thereby, obtain judicial determination of their claims."

As pointed out in petitioner's reply brief, p. 13, "court adjudication is always available to designated representatives *or employees* before they *elect* to file a claim before the Adjustment Board" (emphasis added), in accordance with the decision of this Court in *Moore* v. *Illinois Central Railroad Company*, 312 U.S. 630. In that case this Court held that after endeavoring to settle a grievance with representatives of the carrier, an individual employee is not required to refer his claim to the union for enforcement or to the Adjustment Board for adjudication. He may elect to file in court a claim for his grievance and disregard the adjudicatory processes of the Board and the representatives of the union.

These rights of individual employees, however, although clearly recognized by your petitioner, were never issues in the case at bar. They were never discussed by your petitioner. All arguments of your petitioner were made only with reference to undisputed facts in the case at bar and were not intended to apply to cases of *individual employees* who had revoked the authority given to their representatives and who were *individually seeking remedies for their grievances.* In the case at bar, your petitioner claims that employees individually and specifically designated their representatives, that is, the general grievance committee of the Brotherhood, to act for them not only in the execution of the settlement agreement of October 31, 1938 but also in the filing of the second claim before the Adjustment Board.

The acts of the respondents from November 23, 1938 until September, 1940 were consistent with that authority so given to the Brotherhood officials. *All re-*

spondents were members of the Brotherhood. The rules of the Brotherhood regarding which each respondent is charged with notice, granted this specific authority from each individual respondent to the general grievance committee. *This "individual" authority "individually" granted was not revoked prior to the time the Board entered the award in favor of your petitioner.* No notice of revocation was given to your petitioner or to the Board during such period of years. No actions of the respondents during this period were *inconsistent with* this specific authority granted to the Brotherhood officials. When the respondents "individually" grant such specific authority to the Brotherhood officials by becoming members of the Brotherhood, they "specifically" and "individually" authorized an affirmative course of conduct on behalf of the Brotherhood officials for their benefit. This exercised authority after settlement with the carrier fails and the Brotherhood files the claim with the Board cannot later be *interrupted* or *revoked* except *by notice given to the Brotherhood officials* to cease their efforts in the employees' behalf, by notice to the carrier not to treat with the Brotherhood officials and by notice to the Board, if the claim is pending before it, that the Brotherhood is no longer authorized to represent them or by the employees exercising their own rights with respect to grievances and dealing for themselves.

Petitioner does not regard the right of an individual employee "to confer" with any of its representatives, including its highest executive officers, merely as a right "to be heard" as the majority, in their opinion infer. As heretofore stated, whether the individual employee is a member of the Brotherhood or is not a member he has the right to confer with any representative of your petitioner, including its President, in the event that con-

ferences with local officials have not resulted in settlement of the grievance, including grievances arising out of the interpretation or application of agreements concerning rates of pay, rules or working conditions. As to the latter type of grievances, however, agreement with the designated representatives must be made in order that any adjustment or settlement reached will not deprive such representatives of the class or craft of their right to be consulted and *to bargain* and to *safeguard the bargaining.*

As stated by the Court in *The Order of Railroad Telegraphers* v. *Railway Express Agency,* 321 U. S. 342, 344:

> "Hence effective collective bargaining has been generally conceded to include the right of the representatives of the unit *to be consulted* and *to bargain* about the *exceptional* as well as the routine rates, rules, and working conditions." (Emphasis added.)

Furthermore, as to all *grievances,* it is the *duty* of your petitioner, imposed upon it by Sec. 2, Sixth, of the Act, *to confer with designated representatives of the employees and arrive at* a settlement agreement, if possible.

Your petitioner did not contend with reference to grievances, that "the power to make settlement by agreement is vested exclusively in the collective agent" as set forth in the majority opinion quoted. If an individual employee has the right to bring suit in court individually, as this Court held in the case of *Moore* v. *Illinois Central Railroad Company, supra,* he has the right to *settle* his grievance *individually* in addition to the right to be *heard individually.* However, *this right must be asserted.* An individual cannot slumber upon it, permit his designated representatives to proceed to enforce his individual rights in accordance with specific authority previously granted them and not revoke that authority by proper notice,

or by acts inconsistent with the agency relationship, which amounts to revocation by implication. If the *individual* employee sets in motion specific authority for his designated representatives to act for him relating to grievances, as was done by the rules of the Brotherhood in the case at bar, notice of revocation of that authority should be given to all concerned by the individual employees before the designated representatives file the claim with the Board. In the absence of such notice, actual or by implication, if the designated representative proceeds to act, as did the Brotherhood officials in the case at bar in executing the settlement agreement of October 31, 1938, and in filing the second claim before the Board, and an award is entered by the Board denying the claim, the individuals are bound thereby.

The majority opinion at page 17 states:

> "In accordance with this view 'either party,' within the further provision of Section 3 First (i) authorizing reference of the dispute to the Adjustment Board 'by petition of the parties or by either party,' refers to the carrier or the collective agent, not to the aggrieved employee acting otherwise than by the collective agent. Hence, 'parties' as used in Section 2 First (j) is given similar meaning. Consequently the collective agent also has exclusive power to submit the dispute to the Board and to represent aggrieved employees before it.
>
> "Petitioner's view has been adopted, apparently, in the general practice, if not the formally declared policy of the Adjustment Board. And this, it seems, has been due to the position taken consistently by the employees' representatives on the Board, over the opposition of carrier representatives. The unions, apparently, like petitioner in this case, interpret the Act as not contemplating two distinct systems for the settlement of disputes, one wholly collective for major disputes, the other wholly individual for minor ones. . . ."

These statements from the opinion of the majority d not correctly represent your "petitioner's view" or co struction of the Act.

Your petitioner admits that the Act gives an *individu* employee the right to file a claim before the Adjustme Board. However, the individual employee or groups employees *individually must exercise this right. No a tempt was made to exercise it in the case at bar. The que tion never was an issue in the case.*

Your petitioner is not of the opinion that "the colle tive agent also has *exclusive* power to submit the dispute the Board and to represent aggrieved employees before it. (Emphasis added.) *These matters, also, never were i issue in the case at bar. Consequently your petitioner too no position with reference to them.*

Paragraph (j) of Section 3 in part provides:

> "Parties *may* be heard either *in person*, by counse or by other representatives, *as they may respective elect*, and the several divisions of the Adjustme Board shall give due notice of all hearings to the em ployee *or* employees and the carrier or carriers i volved in any disputes submitted to them." (Emphas added.)

Furthermore, paragraph (i) in part provides:

> "The disputes between an *employee* or group of em ployees and a carrier . . . *may* be referred by pet tion of the parties or by either party to the appr priate division of the Adjustment Board. . . ." (Em phasis added.)

Paragraph (p) in part provides:

> "If a carrier does not comply with an order of division of the Adjustment Board within the time lim in such order, *the petitioner, or any person* for whos benefit such order was made, *may* file in the Distri

> Court . . . a petition setting forth briefly the causes for which he claims relief, and the order of the division of the Adjustment Board in the premises. . . . " (Emphasis added.)

These provisions of the Act clearly grant to an individual employee the right to file his claim before the Board.

It is important to note, however, that the provisions of the statute granting an *individual* employee the right to file *individually* before the Board provide that his petition *"may be referred,"* that he *"may be heard"* in person if he so *"elects"* and that he *"may file"* a petition in the District Court. In other words, *the individual has the right if he exercises it.*

His individual right to file a grievance before the Board is not exercised by individually authorizing the Brotherhood officials to prosecute his grievance before officials of the carrier and, "failing to reach an adjustment" with the carrier, in failing to *elect* to file a claim for his grievance either before the Board or in court. If the union continues to prosecute the grievance, either by filing a claim before the Board or by electing to file a suit at law, as it may elect, the carrier must assume that the *individual* has *not elected* to file his claim individually before the Board or individually in court. *The individual authority granted by each respondent to the Brotherhood continues until revoked.*

The importance of the word "may" as contained in Section 3, paragraph (i) of the Act has been noted by this Court in the case of *Moore* v. *Illinois Central Railroad Co.*, 312 U.S. 630, wherein the Court, page 634, states:

> "But respondent says that there is another reason why the judgment in its favor should be sustained. This reason, according to respondent, is that both the District Court and the Circuit Court of Appeals erred

in failing to hold that Moore's suit was prematurely brought because of his failure to exhaust the administrative remedies granted him by the Railway Labor Act, 44 Stat. 577, as amended, 48 Stat. 1185, 45 U.S.C. § 151, *et seq.* But we find nothing in that Act which purports to take away from the courts the jurisdiction to determine a controversy over a wrongful discharge or to make an administrative finding a prerequisite to filing a suit in court. In support of its contention, the railroad points especially to § 153 (i), which, as amended in 1934, provides that disputes growing out of grievances or out of the interpretation or application of agreements 'shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.' . . . It is to be noted that the section pointed out, § 153 (i), as amended in 1934, provides no more than that disputes 'may be referred . . . to the . . . Adjustment Board . . .' It is significant that the comparable section of the 1926 Railway Labor Act (44 Stat. 577, 578) had, before the 1934 amendment, provided that upon failure of the parties to reach an adjustment a 'dispute shall be referred to the designated Adjustment Board by the parties, or by either party. . . .' This difference in language, substituting 'may' for 'shall,' was not, we think, an indication of a change in policy, but was instead a clarification of the law's original purpose. . . ."

The provision in paragraph (j) hereinbefore quoted requiring that "the Adjustment Board shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in any disputes submitted to them," does not require that notice be given to an *individual* employee *when he has elected not to file his claim individually before the Board.*

In other words, paragraph (j) should be construed to read:

> "Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings to the employee or *groups of* employees, *if he or they elect to be heard individually, to the counsel for the employee or groups of employees, if he or they elect to be heard by counsel, or to the designated representatives of the employee or groups of employees, if he or they have not elected to be heard individually and the dispute has been referred to the Board by the designated representatives,* and *to* the carrier or carriers involved in any disputes submitted to them." [Words supplied noted by emphasis.]

The economy of words in paragraph (j) of the Act should not upset the whole scheme of the Act. When reasonably construed, your petitioner submits that they do not.

An individual employee has made no election to prosecute his grievance individually after settlement with the carrier has failed unless he (1) gives proper *notice of the revocation of his individual authority* previously granted to the designated representatives of the employees, *or* (2) unless he acts inconsistent with individual authority which previously may have been granted to the union representatives so that such actions amount to a revocation and election to act individually.

In the case at bar there was no election. The individual respondents did not elect to file before the Board, although they had the right to do so. Failing adjustment of their grievance by the Brotherhood officials with the carrier, the individual employees in the case at bar failed to elect to file their claim in court, although they then had the right to make such an election. *Their individual election*

to file a suit at law after the Board denied their claim came too late. This point was considered at page 9 of your petitioner's reply brief, as follows:

> "Nevertheless, once the case is referred to the Board by the designated representative and the Board has decided it and denied the claim of respondents, respondents later cannot assert the same claim in court. The policy of the Act that non-money awards of the Board are final and binding deprives courts of power, directly or indirectly, to pass upon the same claims adjudicated by the Board, except in the special cases for which provision is made in paragraph (p) of the Act, which provides the exclusive remedy for court review. *Cf. Baltimore and Ohio R. Co., et al.* v. *Brady,* 288 U.S. 448, 457; *I. C. C.* v. *United States,* 289 U.S. 385, 394.
>
> "When the designated representative files a claim before the Board, the action on the labor agreement at law which therefore existed is merged in the award. If this result does not follow, every time the claim filed before the Board by the designated representative is denied, the temptation will be great for each employee involved to assert that the designated representative did not have specific authority to file the claim and that, therefore, the employee should have another day in court by filing a suit at law for damages. This reasoning would destroy the policy of Congress to make non-money awards final and binding, except as provided in paragraph (p), and would result in the intended adjudication of the Board being a mere ritual with no legal significance."

Stated otherwise, when the respondents in the case at bar joined the Brotherhood they individually and specifically authorized the officials of the Brotherhood to settle *such grievances as might arise,* including the grievances in the case at bar. They individually assented to such authority, as was exercised in the case at bar by the Brotherhood grievance committee, by accepting the provisions in the Brotherhood's constitution and rules hereinafter

quoted at length, authorizing the Brotherhood officials to make settlements relating to grievances. This individual specific authorization constitutes a *continuing authority from the individual respondents to the Brotherhood officials* until the actions of individual respondents amount to a revocation. *No such revocation was made in the case at bar.* Each individual when he became a member of the union assented to such authority as the Brotherhood grievance committee might exercise. These rights individually granted to Brotherhood officials "become rights more of shadow than of substance" if each individual member and respondent here could upset the carefully created agency and planned procedure of the Act by revoking the authority specifically given to his Brotherhood officials *after* an award has been entered by the Board denying his claim.

The statement from the majority opinion hereinbefore quoted to the effect that "the unions, apparently, like petitioner in this case, interpret the Act as not contemplating two distinct systems for the settlement of disputes, one wholly collective for major disputes, the other *wholly individual* for minor ones" (emphasis added) is not in accord with your petitioner's construction of the Act.

Your petitioner realizes that disputes relating to the question of the designation of representatives of the employees of a carrier may be referred to the Mediation Board in accordance with paragraph Ninth of Section 2. Furthermore, disputes concerning *changes* "in rates of pay, rules or working conditions not adjusted by the parties in conference" and any other dispute, excluding grievances, which are not referable to the Board and which have not been adjusted "in conference between the parties or when conferences are refused," may be referred to the Mediation Board in accordance with the

provisions of paragraph First, Section 5. As to these matters, the Mediation Board has exclusive jurisdiction.

Your petitioner further recognizes that there are other types of "disputes" generally referred to as grievances which may be characterized as "minor" ones. Your petitioner does not admit, however, that these are "wholly individual." They may be, and generally, are wholly collective. Individual authority granted to the Brotherhood officials, and not revoked, as here, makes them wholly collective. They may, also, be part individual and part collective.

For example, if the individuals, as in the case at bar, specifically authorize their designated representatives to act for them in the presentation of grievances by giving general authority to their representatives to settle such grievances as might arise, by becoming a member of the Brotherhood and thereby accepting its constitution and rules authorizing officials of the Brotherhood to make such settlements or prosecute such grievances, then the prosecution of the grievance before the officials of the carrier may be considered to be "wholly collective." If the grievance committee of the Brotherhood in prosecuting the grievance fails "to reach an adjustment in this manner", the continued prosecution of the grievance by filing a claim before the Board and a suit of the District Court to enforce the Board's award, if necessary, may be considered to be wholly collective because the individual *did not elect* either to file his claim individually with the carrier or, after his designated representatives failed to reach an adjustment with the carrier, *failed to elect* to file his claim individually either before the Board or in court. But if the individual elects to sue in court on an award of the Board in his favor, the action (and grievance) becomes individual.

In the case at bar, there was no rival union as in the case of *Hughes Tool Company* v. *National Labor Relations Board*, 147 F. 2d 69. No respondent was a non-member of the Brotherhood whose individual claim clashed with the claims asserted by Brotherhood officials. *All respondents were members of the Brotherhood.* In the *Hughes Tool Company* case, however, employees were represented by United Steelworkers of America, C.I.O., the exclusive collective bargaining representative for the unit, Independent Metal Workers Union and an affiliate of American Federation of Labor. United Steelworkers of America claimed that no grievances should be handled which were brought in by the Independent on behalf of Independent members.

The court held that an inexperienced individual employee could ask a more experienced friend to assist him in the presentation of a grievance but could not present his grievance through any union except that which represented the majority of employees and was so certified by National Labor Relations Board, that in any case where the grievance *raises a question of the meaning of the contract,* or presents a situation not covered by the contract, but *concerns a situation regarding which an agreement ought to be made,* the certified representative should participate in the grievance processing. Bargaining and not mere decision is then involved.

Thus, in every case under the National Labor Relations Act where a grievance really involves *bargaining for the unit* or an *interpretation of the bargaining,* representatives of the certified union have the right to be present as the exclusive bargaining representative, even though the grievance may have been filed by an employee individually.

There can be no doubt of the necessity of similar procedure under the Railway Labor Act because Sec. 2, Sixth,

imposes the duty upon a carrier to confer with designated representatives of the employees regarding any dispute between a carrier and its employees "arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions."

After referring to the *Hughes Tool Company* case, the majority opinion (page 20) stated:

> "The statute does not expressly exclude grievances from the collective agent's duty to treat or power to submit to the Board."

But the statute does expressly (Sec. 2, Sixth) *include grievances* in the collective agent's duty "to confer" with the carrier.

The opinion of the majority at page 17 states:

> "Accordingly, petitioner urges that the statute, both by its terms and by its purpose, confers upon the collective agent the same exclusive power to deal with grievances, whether by negotiation and contract, or by presentation to the Board when agreement fails, as is given with respect to major disputes. And the aggrieved employee's rights of individual action are limited to rights of hearing before the union and possibly also by the carrier.
>
> "We think that such a view of the statute's effects, in so far as it would deprive the aggrieved employee of effective voice in any settlement and of individual hearing before the Board, would be contrary to the clear import of its provisions and to its policy."

Your petitioner agrees with the second paragraph of the language quoted. The first paragraph does not represent your petitioner's construction of the statute.

As heretofore stated, *the question whether an employee as an individual may file a claim relating to a grievance either before the officers of the carrier or before the Board*

was never an issue in this case. Your petitioner believes that the individual has such a right. The provisions of the Act give him that right. But no attempt to exercise that right was made in the case at bar until after the Board entered its award. Attempted exercise then was too late.

Although the individual employee has all of these remedies at the time the attempted adjustment of his grievance with the carrier has failed, *he cannot pursue more than one to a conclusion. He must make an election.* Brotherhood officials who have handled his claim before officers of the carrier may, in accordance with individual authority previously granted, continue to handle the grievance and either make a settlement or file a claim in court or before the Board. To prosecute the grievance in court or before the Board constitutes an election by the individual in any case where, as in the case at bar, the rules of the Brotherhood authorized the action taken and the employee has done nothing to revoke his individual authorization.

The court at page 19 stated:

> "Rights of conference are not identical with rights of settlement. But the purpose of conference and the duty to treat is to bring about agreement. The right and the obligation to share in the negotiations are relevant to their aim. Conceivably the statute might confer the right to participate in the negotiations, that is, to be heard before any agreement is concluded, either upon the collective agent or upon the aggrieved employee or employees, at the same time conferring upon the other the final voice in determining the terms of the settlement. This is, in effect, the position taken by each of the parties in this case. But they differ concerning where the final say has been vested. Petitioner maintains it has been given to the union. Respondents say it has been left with them."

The majority statement of the Court that "petitioner maintains it has been given to the union", your petitioner assumes, is intended to apply *generally* and *not to the specific facts in the case at bar.* If so intended, your petitioner respectfully represents that the Court's majority opinion does not present correctly the construction of the Act as made by your petitioner, as heretofore stated.

II.

The majority opinion overlooks some of the rules of the Brotherhood granting specific authority to Brotherhood officials to represent respondents in executing the settlement agreement and in filing the second claim before the Board. If all of these rules are considered not to grant such specific authority—collective bargaining is destroyed.

In the petition for a writ of certiorari filed in this Court in this case, your petitioner (p. 5) stated:

> "If the decision of the Circuit Court of Appeals in this case is not reversed, collective bargaining will be destroyed. Railroads will find it impossible to conduct their operations unless they treat directly with their employees regarding matters of grievance, in order to be assured that settlements with the duly authorized representatives of the employees will not be upset by the niceties of the law of agency. Such direct bargaining is demanded by the decision of the Circuit Court of Appeals in this case. The result will be destruction of the policy created by the Railway Labor Act and conflict with the decisions of this Court prohibiting individual dealing with employees as announced in the cases of *The Order of Railroad Telegraphers* v. *Railway Express Agency*, 64 S. Ct. 582 and *J. I. Case Co.* v. *National Labor Relations Board*, 64 S. Ct. 576."

Your petitioner respectfully submits that the majority opinion in this case does destroy collective bargaining. This result ignores one of the principal reasons why Congress passed the Railway Labor Act—*the prompt settlement of grievances.*

In every case where representatives of the carrier "treat" or "confer" with the designated representatives of the employees, whether the subject matter relates to (1) matters of grievance or (2) matters of collective bargaining concerning claims for the payment of money for *past* acts or concerning relief from liability and the abandonment of *past* acts which may form a *precedent or basis* for future money claims, representatives of the carrier will act at their peril in making any adjustment or settlement of any of these claims with the employee representatives.

1. The carrier representatives may ask the designated representatives of the employees for a power of attorney from each employee affected, authorizing the employee representatives to act for them. The power of attorney may not be sufficiently *specific,* as required by the majority opinion of the Court in the case at bar. Even if sufficiently specific to collect amounts *claimed,* it may not be *specific* enough to authorize the particular terms of the *settlement agreed upon,* either before or after the dispute is submitted to the Adjustment Board. Furthermore, such powers of attorney are not "coupled with an interest." They may be revoked at will. Any employee may claim at any time that he revoked his power of attorney before his representatives acted or before they referred the case to the Adjustment Board.

2. The constitution, rules and by-laws of the Brotherhood or union acting as the representative of the employees, no matter how broad or general or clearly expressed, cannot confer upon the employee representatives the

specific powers required by the opinion of the majority in the case at bar.

General Rule No. 3 of the Constitution and General Rules of the Brotherhood of Railroad Trainmen in part provides:

> "... It shall be the duty of each General Grievance Committee carefully to investigate all matters lawfully placed in its hands. It shall have the power to *alter, amend, add to, or strike out, any part or all of any complaint or claim submitted to the committee* ... After the committee has decided on the justness of any claim or complaint, it shall proceed with all effort to adjust the same with the general officers of the road in accordance with General Rule No. 8. ... A general Grievance Committee shall not revise or change a general or system wage schedule or agreement unless authorized to do so by a majority vote of the lodges on the system or by a majority vote of the membership on the system *if such vote is deemed advisable by the general committee,* and it may, when authorized to do so, make and enter into contracts or agreement not inconsistent with the law and policy of the Brotherhood, with the railroad, the employees of which it represents, concerning rates of pay and working conditions." [Emphasis added.]

General Rule No. 5 in part provides:

> "... Should the grievance be sustained, the lodge will then authorize either the local chairman or the local grievance committee to lay the matter before the train master, superintendent, or other proper officer, and use every means to effect a satisfactory settlement, and report his or their action and all things pertaining to the case to the lodge. If the result is not satisfactory, it may be referred to the general grievance committee for further action. *A member of a lodge may withdraw a grievance placed in the hands of a general grievance committee provided such action is taken before said grievance has been presented by the general grievance committee to the officer of the Company, but not thereafter....*" [Emphasis added.]

General Rule No. 7 in part provides that the general grievance committee

> ". . . shall have power to *alter, amend, add to or strike out . . . any part or all of any complaint or claim submitted to the committee,* subject to appeal to the entire General Committee and/*or* Board of Appeals. A general Grievance Committee may authorize their chairman to handle all grievances received from local lodges with the management for *settlement,* . . . " [Emphasis added.]

General Rule No. 8 in part provides:

> "The general grievance committee, as thus constituted shall have all the rights and powers of the full general grievance committee of the system in the consideration of the pending grievance. If the grievance is approved, the committee shall present it to the general officers of the company and use every honorable means to adjust the same; . . ."

General Rule No. 8½ in part provides:

> "Any . . . General Committee . . . closing out cases, *accepting settlements for grievances* referred to them, will within thirty days from date of such action notify the Secretary of the lodge where grievance originated and the member or members filing grievance of such action . . ." [Emphasis added.]

Rule No. 10 in part provides:

> "Whatever action may be taken by the General Grievance Committee . . . shall be law to the Lodges on that road until *and unless reversed by the* Board of Appeals, and if any member refuses to vote or abide by the action of such General Grievance Committee . . . he shall be expelled from the Brotherhood for violation of obligation. . . ." [Emphasis not added.]

Article 25 of the labor agreement or schedule between the petitioner and the respondents provides:

> "Any controversy arising as to the application of the rules herein agreed upon to the Schedule shall

be taken up by the *local committee* and the *local officials*. In the event of failure on their part to agree upon a *satisfactory basis of settlement*, the General Committee may take up the question with the General Superintendent, and in the event of their *failure to agree upon a satisfactory settlement*, the Committee may appeal to the Vice President." [Emphasis added.]

In addition, respondents admit (R. 48):

"... your plaintiffs were informed that the officials of the B. of R. T. were unable to persuade the Company to agree to abide by Article 6. Said *officials of the B. of R. T. were then authorized to file a complaint with the National Railroad Adjustment Board* to enforce the terms thereof and compel the Defendant to perform thereunder.

"That the Company also refused to enter a stipulation of facts to be submitted to the National Railroad Adjustment Board, and that therefore, *said officials of members submitted said complaint to said board* 'ex parte' to endeavor to have said Board compel the Company to furnish your Plaintiffs with engines and the work as set forth in Article 6 of the 'schedule'." [Emphasis added.]

Your petitioner contends that the constitution and rules of the Brotherhood, the provisions of Article 25 of its labor agreement with the Brotherhood and the authorization by the respondents to file the claim before the Adjustment Board (No. 3537) to obtain compliance with Article 6 of the labor agreement constituted *"individual" and specific authority* to the grievance committee officials to make the settlement agreement of October 31, 1938 and also to file the second claim (No. 7324) before the Adjustment Board.

The majority opinion of this Court finds such specific authority wanting and that the question of specific authority is a question of fact for the jury. Not even Rule

No. 10 of the Brotherhood, *of which all of the respondents are members,* providing that "whatever action may be taken by the General Grievance Committee . . . shall be law to the Lodges on that road . . . and if any member refuses to vote or abide by the action of such General Grievance Committee . . . he shall be expelled from the Brotherhood for violation of obligation" is considered by the majority opinion to be specific authority to make the settlement agreement of October 31, 1938 or to file the second claim before the Board.

If these general powers granted to the grievance committee are not considered by the majority of this Court to be sufficiently "individual" and specific to authorize the settlement and later the filing of the claim before the Adjustment Board in the case at bar, the carriers cannot rely upon *any* constitution, rules, by-laws or schedule provisions claimed by employee representatives to authorize them to act in *specific cases.*

3. If the carrier representatives require a resolution of each local lodge of the Brotherhood before making an adjustment or settlement with the employee representatives, some employees may not be present at the lodge meeting when the resolution is adopted. Thus, they may successfully contend, in accordance with the majority opinion of the Court in the case at bar, that they are not bound by the provisions of the resolution and the acts of their representatives pursuant thereto in making the *specific* settlement or taking the *specific* action before the Board.

4. The death of a particular employee at any time after he grants specific authority to his designated representative will operate as a revocation of the power of such representative to act for his widow and children, contrary to the decision of *Smith, et al.* v. *Texas & N. O. R. Co.,* 32 F. Supp. 1013, 118 F. 2d 75 (petitioner's brief, p. 26).

5. If the carrier engages in a practice which the carrier admits entitles an employee to a money claim, the carrier may admit that fifty other employees in the same class or craft are likewise so entitled to the payment of a money claim. Such claims cannot be settled or adjusted with the designated representatives of the employees in the absence of *specific and individual* authorization from *each employee* to make the *specific* settlement or adjustment.

Thus, the only methods by which representatives of the carrier may obtain final disposition of an unsettled grievance or claim is (1) either to file a suit for declaratory judgment *before* the grievance or claim is presented to the Adjustment Board for adjudication or (2) "to settle all disputes" *individually* with each employee.

The filing of a suit for a declaratory judgment under such circumstances to settle all disputes "growing out of grievance or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions," Sec. 153 (i), to declare the rights and other legal relations of the petitioner is permitted by the Declaratory Judgments Act (28 USCA 400) and does not contravene the decision of *Washington Terminal Co.* v. *Boswell, et al.*, 124 F. 2d 235, affirmed by an equally divided Court, 319 U. S. 732.

One alternative to escape the lack of finality created by the opinion of the majority in the case at bar drives carriers and employees into courts for adjudication of their grievances, providing the filing of the complaint by the carrier is made *before* the dispute is referred to the Adjustment Board. This procedure is consistent with the legislative history of the Act and its amendments. Neither Congress nor the courts have considered the adjudicatory provisions of the Act to be exclusive. This Court has held in *Moore* v. *Illinois Central Railroad Co.* (312 U. S. 630, petitioner's reply brief, p. 13) that an employee of the car-

rier may omit to file a claim before the Board and file suit in court on his claim or grievance. The principles announced in that case are well settled law. They apply equally to a carrier.

The other alternative is the execution of *individual* settlements with employees.

Either alternative applied to every grievance destroys collective bargaining. Settlement of grievances is its staff of life. If these settlements are required to be made individually, collective bargaining dies.

Your petitioner respectfully submits the majority opinion in the case at bar violates the clearly expressed policy of Congress for "a more effective process of settlement" of grievances. For the convenience of the majority, there is set forth for re-examination in the appendix to this petition the reports of the Senate and House Committees made prior to the adoption of the 1934 amendments to the Act.

The interpretation of that Act by this Court imposing upon representatives of a carrier "the affirmative duty to treat only with the true representative and, hence, the negative duty to treat with no other" (*Virginian Railway Co.* v. *Federation*, 300 U. S. 515-548, petitioner's brief, p. 20) so frequently quoted by the decisions of this Court, now becomes a trap for carrier representatives who in good faith settle disputes or grievances with designated representatives of the employees specifically authorized to act for them by the rules of their Brotherhood, in a manner which prior to the decision of the Court in the case at bar carriers thought was required by the Railway Labor Act. As to grievances or past claims arising in collective bargaining negotiations, the "true representative" may *lack individual authority in every case to make the specific settlement unless rules of the Brotherhoods are considered*

to grant specific authority. Failing settlement, a further surprise is present for such carrier representatives if the claim or grievance is submitted by the employee representatives to the Board for adjudication, and the claim is denied by the Board or by the Board's referee appointed to decide it. Employees may repudiate the adjudication, notwithstanding that the Act says it is "final and binding," claim that they did not give their representatives *individual authority* to file the claim with the Board, and retry the issues in a suit at law, as in the case at bar. *This result was never intended by the Railway Labor Act.*

CONCLUSION.

Rule 3 of the Brotherhood, hereinbefore quoted, is relied upon by respondents and by the majority opinion (pages 6 and 25) to indicate that individual authority was not granted to the Brotherhood. That rule, in part providing that the general grievance committee "shall not revise or change a general or system wage schedule or agreement unless authorized to do so by a majority vote of the lodges on the system or by a majority vote of the membership on the system *if such vote is deemed advisable by the general* [*grievance*] *committee* . . . " [emphasis added] is clearly not applicable to the facts in the case at bar. No revision or change in a wage schedule was being considered. The wage schedule remained as it existed when the dispute arose (except as to subsequent national increases.) The construction of this rule applied to the facts in the case at bar should not present a jury question.

Rule 5 of the Brotherhood, also quoted hereinbefore, in part provides:

> "A member or a lodge may withdraw a grievance placed in the hands of a general grievance committee, provided such action is taken before said grievance has

been presented by the general grievance committee to the officer of the Company, *but not thereafter . . .*". [Emphasis added.]

This rule of the Brotherhod confers specific and general authority to settle such grievances as might arise. Every respondent in the case at bar assented to such authority by becoming a member of the Brotherhood. This is made clear when Rule 5 is construed together with Rules 3, 7, 8, 8½ and 10. The majority opinion admits (page 22) that authority to settle might be so conferred. Furthermore, Rule 10 in part provides that "whatever action may be taken by the General Grievance Committee shall be the law on that road . . . ". This authority assented to by all respondents is authority to file before the Board. The rules disclose "an unequivocal intention to surrender the individual's right to participate in the settlement and to give the union final voice in making it together with exclusive power to represent him before the Board", as required by the majority opinion, page 26. "The employees had finally committed the whole matter of their claims into the union's hands in such a manner as to constitute a surrender of their individual rights to concur in any agreement of settlement", as required by the majority opinion, page 28. Likewise, "respondents had authorized the union to act finally for them", as the majority opinion, page 28, requires. There was no revocation of this authority until after the Board rendered its award. Thus, specific authority to make the settlement and file before the Board is clearly present. No jury question is presented.

Your petitioner respectfully represents that the majority opinion inadvertently misrepresents its construction of the Act relating to the rights of individual employees and their grievances. Some of these issues were not present in the case. For that reason your petitioner took no position

regarding them. Rehearing should be granted to enable your petitioner to state its position.

Your petitioner respectfully represents, also, that Rule 5 and other rules contained in the "Constitution and General Rules of the Brotherhood" were overlooked as misapprehended by the majority. Rehearing should be granted to give effect to these rules upon the issues of this case.

Respectfully submitted,

PAUL R. CONAGHAN,
Counsel for Petitioner.

CERTIFICATE OF COUNSEL.

I, Paul R. Conaghan, counsel for the above named petitioner, do hereby certify that the foregoing petition for a rehearing of this cause is presented in good faith and not for delay.

PAUL R. CONAGHAN,
Counsel for Petitioner.

APPENDIX.

SENATE

73d Congress) (Report
2d Session) (No. 1065

BOARD TO SETTLE DISPUTES BETWEEN CARRIERS AND THEIR EMPLOYEES

May 10 (calendar day, May 21, 1934)
Ordered to be printed

Mr. Dill, from the Commitee on Interstate Commerce, submitted the following

REPORT

[To accompany S. 3266]

Your committee, to whom was referred Senate bill 3266, has held hearings on the same, made certain amendments thereto and hereby report the bill favorably to the Senate with the recommendation that the bill as amended do pass.

This bill proposes to amend the Railway Labor Act by rewriting it and making several far-reaching and important changes in the operation of the adjustment boards *to settle grievances* and the work of the mediation board.

Congress passed the Railway Labor Act with the joint approval of both the representatives of the railroads and the railway labor organization. They believed it would enable them to *settle their differences* without the element of compulsion.

They have tried this act for nearly 8 years. It has served a most useful purpose and brought about many good results, but both the representatives of the railroads and of the employees agree that it needs improvement. This bill is intended to provide the needed amendments.

The most important change in the bill is the creation of what is termed the "National Adjustment Board." This Board will have four divisions. Each division will have a neutral member, *so that these divisions will be able to make decisions.* The present regional boards have no neutral members and for that reason are often unable to arrive at decisions.

One of the principal weaknesses of the present law in practice has been that regional boards have not been set up in some sections of the country for settlement of the disputes in some of the crafts. Both representatives of the carriers and of the employees agree that the *setting up of boards for the settlement of disputes should be made compulsory, when necessary.* Representatives of the carriers proposed that the setting up of regional boards be made compulsory; representatives of most of the employees insisted that the setting up of the National Board of Adjustment with four divisions be made compulsory.

As introduced in the Senate, Senate bill 3266 provided only for the creation of a National Board. Your committee has amended the bill authorizing the divisions of the National Board of Adjustment to provide for regional boards whenever, in the discretion of any division, it is desirable to create a regional board. The regional boards will be created for temporary periods, but their members are to be chosen in the same manner as the members of the National Board of Adjustment and *their decisions are to be binding and enforceable in the courts in the same manner.*

Your committee believes that this amendment is highly desirable for the satisfactory operation of the law.

The four divisions of the National Adjustment Board are to be independent of one another. *Each division is to adjust the disputes and grievances of a certain group of crafts,* as specified in the bill. It may be subdivided to take testimony, but the entire division makes the decision. Thus, there will be in effect 18 boards for the taking of testimony and 4 to make decisions.

Each division will be composed of an equal number of representatives of the railroads and employees respectively, and each will compensate its representatives. In case of a deadlock, the members of the division may select a neutral member. If they cannot agree, then the National Mediation Board will select the neutral member, and he will be paid by the Government.

The bill also provides for the establishment of regional or system boards of adjustment, if the railroads and the employees desire to set up such boards voluntarily. *The ideal situation would be to have disputes and grievances settled by the men and management on the several properties* without any recourse to adjudication by an outside tribunal. *Some of those advocating this legislation believe the fact that there is a compulsory board to which grievances may be taken will greatly increase the settlement of disputes* by voluntary adjustment boards between the employees and the railroads.

Another extremely important change from the present law which this bill provides is that it prohibits any carrier from providing financial assistance to any union of employees from funds of the carrier. It also prohibits the railroads from interfering in any manner whatsoever with employees joining or refusing to join any organization or union. The bill specifically provides that the choice of representatives of any craft shall be determined by a majority of the employees voting on the question.

This prohibition is not new. Congress has declared it three times; in the present Railway Labor Act, the Bankruptcy Act and the Emergency Transportation Act. But there are no penalties against its violation. This bill provides severe penalties for violation of the law.

Section 4 of this bill abolishes the present Board of Mediation, consisting of 5 members, and establishes a new board called the "National Mediation Board", consisting of 3 members.

The present board has many important accomplishments to its credit. It has had many difficult tasks to perform. Its powers are wholly persuasive. *The fact that under this bill the National Adjustment Board will deal with many grievances* now brought before the Board of Mediation, makes it unnecessary that the new Board shall have such a large membership.

This new and smaller Board will have power to select and appoint employees to act as mediators under the instruction of the Board with the same freedom to delegate its work as the Interstate Commerce Commission now possesses. This board will appoint the neutral members when necessary to obtain decisions of the National Board of Adjustment and is also authorized to set up a neutral committee to determine *what employees shall vote in the elections to determine the representative in any grievance.*

This determination of what employees shall be allowed to vote is one of the most controversial subjects in the settlement of disputes. Your committee amended the bill so that if the Mediation Board found it might arouse antipathy on the part of the carriers or the employees in deciding questions of this kind, it could create a neutral committee to do that work, so its own usefulness of settling disputes that might arise thereafter might not be impaired. [Emphasis added.]

HOUSE OF REPRESENTATIVES

73d Congress) (Report
2d Session) (No. 1944

TO AMEND THE RAILWAY LABOR ACT OF MAY 20, 1926

June 11, 1934.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed

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Mr. Crosser of Ohio, from the Committee on Interstate and Foreign Commerce submitted the following

REPORT

(To accompany H. R. 9861)

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H. R. 9861) to amend the Railway Labor Act approved May 20, 1926, and to provide for the *prompt disposition of disputes between carriers and their employees,* having considered the same, report thereon with a recommendation that it pass with the following amendments:

Page 8, line 6, after the word "reach" strike out the word "of". Page 22, line 15, after the word "section" insert a period.
After the word "section." change the small "i" to capital "I" in the word "in".

The Committee on Interstate and Foreign Commerce, to whom was referred bill (H. R. 9861) to amend the Railway Labor Act, approved May 20, 1926, and to provide for the *prompt disposition of disputes between carriers and their employees,* and for other purposes, having con-

sidered the same, report favorably thereon to the Hou and recommend that the bill do pass.

Extensive hearings were held on this bill and the viev of railway managements, employees, Federal Coordinato chairman of the United States Board of Mediation, an other interested parties were presented. All agreed th the present Railway Labor Act is in need of amendmen The 21 Standard Railroad Labor Organizations unan mously urge the enactment of this legislation.

The purposes of this bill are:

1. To prohibit any interference with freedom of ass ciation among employees and to prevent the denial of t right of employees to join a labor organization as a co dition precedent to their employment.

2. To provide for the complete independence of ca riers and of employees in regard to self-organization order to carry out the purposes of this act.

3. *To provide for the prompt and orderly settlement all disputes growing out of grievances and out of the i terpretation or application of agreements concerning rat of pay, rules, or working conditions,* so as to avoid an interruption of commerce or of the proper operation any carrier engaged therein.

ANALYSIS OF THE BILL.

(Section 2)

1. *The bill does not introduce any new principles in the existing Railway Labor Act,* but it is designed to amen that act in order to correct the defects which have becom evident as a result of 8 years of experience. *It does n change the methods of conference, mediation, and voluntar arbitration to settle major disputes over wages and wor ing conditions,* which are provided in the Railway Lab Act of 1926, now in effect.

2. It provides that the employees shall be free to join any labor union of their choice and likewise be free to refrain from joining any union if that be their desire and forbids interference by the carriers' officers with the exercise of said rights.

3. While providing that labor unions shall be free from employer influence and control, it does not give preference to any particular union or class of unions.

4. Machinery is provided for the taking of a secret ballot *to enable the Board of Mediation to determine what representatives the employees desire to have negotiate for them with the managements of the carriers in matters affecting their wages and working conditions.*

5. It forbids the use of the carriers' funds to maintain, aid, or control the labor organizations of the employees and specifically prohibits carrier managements from requiring employees to sign "yellow-dog contracts" requiring them to join company unions.

6. The Railway Labor Act of 1926, now in effect, provides that representatives of the employees, for the purpose of collective bargaining, shall be selected without interference, influence, or coercion by railway management, but it does not provide the machinery necessary to determine who are to be such representatives. *These rights of the employees under the present act are denied by railway managements by their disputing the authority of the freely chosen representatives of the employees to represent them.* A considerable number of railway managements maintain company unions, under the control of the officers of the carriers, and pay the salary of the employees' representatives, a practice that is clearly contrary to the purpose of the present Railway Labor Act, but it is difficult to prevent it because the act does not carry specific language

in respect to that matter. This bill is designed to corr
that defect.

(Section 3)

7. *The second major purpose of the bill is to prov*
sufficient and effective means for the settlement of mi
disputes known as "grievances", which develop from
interpretation and/or application of the contracts betw
the labor unions and the carriers, fixing wages and work
conditions. The present Railway Labor Act provides
the establishment of boards of adjustment by agreeme
In many instances, however, the carriers and the employ
have been unable to reach agreements to establish s
boards. Further, the present act provides that when
if such boards are established by agreement, the employ
and the carriers shall be equally represented on the bo

Many thousands of these disputes have been conside
by boards established under the Railway Labor Act;
the boards have been unable to reach a majority decisi
and so the proceedings have been deadlocked. These
adjusted disputes have become so numerous that on seve
occasions the employees have resorted to the issuance
strike ballots and threatened to interrupt interstate c
merce in order to secure an adjustment. This has m
it necessary for the President of the United States
intervene and establish an emergency board to investig
the controversies. This condition should be corrected
the interest of industrial peace and of uninterrupted tra
portation service. *This bill, therefore, provides for*
establishment of a national board of adjustment to wh
these disputes may be submitted if they shall not h
been adjusted in conference between the parties. The p
visions as to the national board of adjustment are
follows:

(a) The board is to consist of equal number of rep
sentatives of the employees and the carriers. The m

bers of the board are to be paid by the parties they represent.

(b) The board is to be divided into four divisions, each functioning independently of one another.

(c) Division 1 is given the authority *to hear and decide* disputes involving train, engine, and yard service employees, such as engineers, firemen, conductors, trainmen, and switchmen.

(d) Division 2 is to *hear and decide* the disputes of the mechanical forces, such as machinists, boiler makers, blacksmiths, electrical workers, sheet-metal workers, carmen, stationary firemen, and oilers, and their apprentices and helpers, respectively.

(e) Division 3 is to *hear and decide* disputes of dispatchers, telegraphers, clerks, freight handlers, express, station, and storehouse employees, maintenance-of-way and section forces, Pullman conductors, maids, and porters, dining-car employees, and other miscellaneous groups.

(f) Division 4 is to *hear and decide* disputes of the employees engaged on the marine equipment, such as masters, mates, pilots, marine engineers, longshoremen, etc.

(g) If any division of the Board should deadlock on a dispute, then the representatives on the Board will endeavor to select a neutral or impartial person, and if they are unable to agree upon the selection of such neutral person, then the United States Board of Mediation will appoint a neutral person. The dispute will then be again considered and a *majority decision reached.*

(h) It is further provided that should the National Board in its discretion, find it advisable to establish subordinate boards in any particular section of the country in order to take care of its work, that may be done.

(i) Finally, the bill gives absolute freedom to the carriers and the employees to establish any other machinery upon which they may voluntarily agree. If such voluntary machinery should be established, then the parties are exempt from the jurisdiction of this National Board.

(j) There is no increase in expense to the Government provided for in this bill. At the present time the United States Board of Mediation maintains a staff of field men to aid the parties in adjusting these disputes when they are not decided by the adjustment boards. That method will no longer be necessary because these boards will now have a neutral person, which will make it possible to break deadlocks and reach decisions.

The committee is confident that this bill strengthens the Railway Labor Act, where it is necessary to do so, and feels sure that if the act is amended as proposed in this bill, it will *provide effective and adequate machinery to adjust controversies between the carrier managements and employees. It will assure employees the right to bargain collectively and will contribute immeasurably to the establishment and maintenance of industrial peace.*

As heretofore stated in this report, all of the standard railroad labor organizations, numbering 21, are supporting the bill and unanimously urge its passage. [Emphasis added.]